1949.

File No. O. Special Marriage/49

Legal Department } A BRANCH

Subject:— Opinions under the Special Marriage Act-1872

P5/E

File No. O. Special Marriage/49

299 H

C O N T E N T S.

Legal Department File No. 0. Spl Marriage /49.

Sr. No.	R.I./O.No.	Subject	Pages.
1.	O.No. 1550 9-2-49	The Special Marriage Act, 1872 -- Sec. 4 -- Validity of marriage after lapse of three calendar months -- whether notice is invalid..	1-2
2.	O. No. 2871 12.3.49.	Sec. 2(4) ---- Marriage of a Hindu with his sister's daughter -- validity of	3-4.

V.M.D./5-6
Sc.

Office of the R.L.A.

pecial Marriage Act, 872 , sec. -- alidity of arriage after apse of three alendar months.

The question raised for R.L.A's consideration is whether in a case where a notice has been given in the form in the First Schedule to the Special Marriage Act, 1872, the marriage solemnised after the lapse of three calendar months from the date of notice is invalid.

Section 4 of the Special Marriage Act, 1872, provides :

> "When a marriage is intended to be solemnised under this Act one of the parties must give notice in writing to the Registrar before whom it is to be solemnised.
>
> The Registrar to whom such notice is given must be the Registrar of a District within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.
>
> Such notice may be in the form given in the first schedule to this Act. "

The form of notice prescribed in the First Schedule is as follows :

> "I hereby give you notice that a marriage under Act III of 1872 is intended to be had within three calendar months from the date hereof, between one and the other party herein named and described, etc?

Reading the provisions of section 4 along with the form of notice in the First Schedule it is clear that the conditions mentioned in the first two parts of section 4 are obligatory while the condition in the third part is directory. The form of the notice in the First Schedule itself states that a marriage is intended to be had within three calendar months. This means that it is merely an expression of the intention of the party giving the notice that the marriage was to be had within three calendar monthsmx. Thre is nothing obligatory on x the part of the person giving notice that he would have the marriage within three calendar months. Consequently even if the marriage is solemnised more than three calendar months after the notice, the marriage would not be illegal nor void. The view taken hyxHxxixLxGxDx in its office

by H. & L.G.D. in its office note is correct.

Sd/- P.M.Lad. 8-8
Remembrancer of Legal Affairs.

U.O. to H. & L.G.D. No. 1550, dated the 9th February 1949.

V.M.D./5-6
4c.

Office of the R.L.A.

Marriage of a Hindu with his sister's daughter. Validity of -

The question raised for R.L.A's consideration is whether the marriage of a Hindu with his sister's daughter is prohibited by section 2(4) of the Special Marriage Act, 1872.

The Special Marriages Act, 1872- sec. 2(4).

2. Under section 2(4) of the Special Marriage Act, 1872, marriages may be celebrated upon the condition that the parties must not be related to each other in any degree of consanguinity or affinity which would according to any law to which either of them is subject render a marriage between them illegal. The first proviso thereto provides that no such law or custom other than the one relating to consanguinity or affinity shall prevent them from marrying. The second proviso thereto provides that no law or custom as to consanguinity shall prevent them from marrying unless the relationship can be traced between the party through some common ancestor who stands to each of them in a nearer relationship than that of a great-great-grandfather or great-great-grandmother or unless one of the parties is the lineal ancestor or the brother or sister of lineal ancestor of the other. The question of prohibition by reason of affinity does not arise in the present case. The only question relevent for consideration would be whether the marriage would be prohibited by reason of consanguinity as provided in section 2(4) read with the second proviso.

"According to Mitakshara law persons cannot marry if their common ancestor- if traced through the father of either of them is not beyond the seventh degree in the line of ascent from either of them or if traced through their mothers is not beyond the fifth degree in the ling of ascent from either of them. In other words, descendants up to the seventh degree, through males or

females of the paternal ancestors up to the seventh degrees and descendants up to the fifth degree of maternal ancestors up to the fifth degree are excluded as sapindas ". See Gupte's Hindu Law page 894. Even upon a restrictive view according to which the prohinition is confined only to three degrees on either side, this marriage would be opposed to the established rule of Sapindya. In the present case the parties to the marriage are thus prohibited from marrying on the ' Sapindya. In the present case the parties to the marriage are thus prohibited from ~~x~~ marrying on the ground of consanguinity. Furthermore their relationship being traced through the common ancestor who stands to each of them in a nearer relationship than that of a great-great-~~grandfather~~ grandfather or great-great-grandmother, the the second proviso to section 2 will apply. It is, therefore, clear that the marriage between the parties would be hit by section 2(4) and would not be saved by the second proviso thereto. It is true that a marriage in contravention of the consanguinity conditions is valid if such marriage is sanctioned by custom. But custom must be valid and not against public policy. Marriage with a niece although customary amongst certain classes has been held by the Bombay High Court to be incestuous, against public policy and invalid; (see Ramangouda v. Shivaji quoted at page ~~896~~ 896 of Gupte's Hindu Law). Consequently, even if the parties set up a custom, the Court will in all likelihood hold such marriage as invalid.

Sd/- P.M.Lad. 11-3
Remembrancer of Legal Affair

U.R. to H. & L. G. D. No 2871 dated the 18th March, 1949.

V.M.D./5-6
4c.